Denver Law Review

Volume 37 | Issue 4 Article 8

May 2021

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The recent federal census has only furnished proof of what we have known all along — that urban populations have been increasing rapidly while rural populations are in many areas on the decrease. Most of this increase has been in the fringe areas and even in the smaller cities surrounding the larger cities. This movement to the cities was accentuated during the war years when persons were engaged in the defense effort and it has continued and been accelerated by the location of industries which in one way or another are connected with the production of missiles or other products of the atomic era.

The concentration of populations in urban areas has led to fringe strips surrounding cities where persons have been able to construct housing facilities and, for a time at least, escape the taxes levied by the adjoining city. But such construction in unincorporated fringe areas has caused many problems for local and state authorities and the home owners usually find that if they want all of the services which are afforded by the adjacent city, the cost in taxes is higher than it would have been if the home had been constructed in the city.

These problems of the fringe areas would not have arisen if there had been adequate annexation laws whereby the territory surrounding cities could be annexed to the city as the need for municipal services grew. But the device of annexation has not been allowed to accomplish its best results because annexation is all too often a political matter.

The fixing of municipal boundaries is generally considered to be a legislative and not a judicial function.[1] Since the legislature has plenary power in respect to municipal corporations, in the absence of any constitutional provisions to the contrary, it may choose any appropriate agency such as a court, a city council, or the electors, to determine when an annexation should be made, provided that the annexation laws define the conditions upon which territory

1 2 McQuillin, Municipal Corporations §§ 7.03 and 7.10 (3d ed. 1949).

may be annexed and direct the agency to grant relief on finding the necessary facts, or, when the prescribed conditions exist, submit the final determination to the electors interested.[2]

It is well settled in this state that statutes which vest in courts, political bodies, or the people of a community, authority to determine and change, under the provisions of the law, the boundaries of cities and towns, are not a delegation of the power to make laws, and therefore are not violative of the maxim that the power conferred upon the legislature cannot be delegated by that department to any other body or authority.[3]

Territory may be annexed to a municipality without the consent of the owners of the property to be annexed,[4] without submitting the question to the determination of the electors of the city,[5] and probably without obtaining the consent of the city itself, although a statute may require the consent of the city.[6] While the claim is often made that Denver cannot annex adjoining property and thus change county boundaries without a vote of the electors of such adjoining county, this claim has twice been refuted by the supreme court.[7]

The Colorado Constitution forbids the passage of local or special laws where a general law can be made applicable.[8] It further requires the general assembly to provide by general laws for the organization and classification of cities and towns into classes not exceeding four in number; and the powers of each class shall be defined by general laws.[9] Under these constitutional provisions, all annexation acts must be general in nature and apply in the same manner to all municipal corporations of the same class. Several Colorado cases have held that annexation statutes did not constitute special legislation.[10]

The constitution would probably prohibit the annexation of non-contiguous lands,[11] and the annexation of land already included in another city or town.[12] The annexation statute[13] requires as a condition of annexation that the land be contiguous and unincorporated. But outside of these, there are practically no restrictions upon the power of the legislature to prescribe the terms of annexation.

Prior to the 1945 amendment, Colorado had a conglomeration of statutes which varied greatly in the methods employed for annexation:

(1) Where land was platted as an addition and the owners of

2 Mayor of Valverde v. Shattuck, 19 Colo. 104, 34 Pac. 947 (1893).
3 Town of Edgewater v. Liebhardt, 32 Colo. 307, 76 Pac. 366 (1904); Rhodes v. Fleming, 10 Colo. 553, 16 Pac. 298 (1887).
4 2 McQuillin, Municipal Corporations § 7.16 (3d. ed. 1949); See also People *ex rel.* Simon v. Anderson, 112 Colo. 558, 151 P.2d 972 (1944).
5 Mayor of Valverde v. Shattuck, 19 Colo. 104, 34 Pac. 947 (1893).
6 Perry v. City of Denver, 27 Colo. 93, 59 Pac. 747 (1899).
7 Simon v. County of Arapahoe, 80 Colo. 445, 252 Pac. 811 (1927). Simon v. Anderson, 112 Colo. 558, 151 P.2d 972 (1944).
8 Colo. Const., art. V, § 25.
9 Colo. Const., art. XIV, § 13.
10 Reichelt v. Town of Julesburg, 90 Colo. 258, 8 P.2d 708 (1932); Mayor of Valverde v. Shuttuck, 19 Colo. 104, 34 Pac. 947 (1893).
11 Town of Greenwood Village v. Heckendorf, 126 Colo. 180, 247 P.2d 678 (1952); City of Denver v. Coulehan, 20 Colo. 471, 39 Pac. 425 (1894).
12 *In re* City of Denver, 18 Colo. 288, 32 Pac. 615 (1893).
13 Colo. Rev. Stat. § 139-11-2 (2) (1953).

two-thirds of the area petitioned the city for annexation, the council could annex upon a three-fourths vote of the council members.[14]

(2) If the council desired to annex contiguous territory, it might by ordinance submit the question of annexation to the qualified electors of the city, and if a majority voted in favor thereof, the territory was annexed; provided that unplatted land must have the written consent of the owners unless the tract was four acres or less in size and at least one-half of the boundaries were contiguous to the city.[15]

(3) If contiguous land had been platted, the city council might petition the county court and after notice, if the court found that "justice and equity require that said territory or any part thereof should be annexed to such corporation, a decree shall be enacted accordingly . . . ."[16]

(4) Whenever any tract of land containing not less than forty acres adjoining any city had been subdivided and a plat recorded, the majority of the owners of the lands included might petition the county court for annexation. If the council did not show cause why the land should not be annexed, the question of annexation was submitted to the electors, and if the vote was in favor of annexation, the court entered a decree annexing the territory.[17]

(5) Whenever any tract of land adjoining a city of the first class had been platted, the council might publish a notice of the time and place of a hearing upon annexing such territory, and after hearing any objections thereto, the council might by ordinance declare such land annexed; provided that if such tract to be annexed contained fifty or more inhabitants, a majority of the qualified electors therein should first consent to such annexation.[18]

It will thus be seen that all of the various methods of annexation were being used in Colorado — the judicial decree, council action, vote of the residents of the area to be annexed, and vote of the electors of the city to which the territory was to be annexed.

It was then thought that it would be better to have just one method of annexation to fit all situations and in 1945 an act was passed which repealed all other acts. It defined what territory might be annexed and required the proceedings to be initiated by

14 Colo. Sess. Laws 1887, § 1 at 432.
15 Colo. Sess. Laws 1913, ch. 116 § 1 at 426.
16 Colo. Gen. Stat. 1883, ch. 109 § 3307 at 963.
17 Colo. Sess. Laws 1891, § 5 at 390.
18 Colo. Sess. Laws 1891, § 6 at 378.

the owners of at least two-thirds of the area to be annexed.[19] If the city council approved the annexation, it petitioned the county court and notice of hearing was published. At such hearing, if the court found that the petition was true and the notice was valid, it appointed five commissioners to hold an election among the landowners residing within the territory to be annexed and who paid or were liable for a tax on real estate therein during the year preceding that in which the petition was filed. If the commissioners found that there were less than twenty-five electors qualified to vote and that at least two-thirds of those electors had consented to such annexation in writing, the court might dispense with the election.

This 1945 law was too complicated for most annexations. It was also too strict in its requirements to be of any assistance to cities which were trying to improve fringe areas by annexation. Consequently many and various attempts have been made to improve upon the annexation statute, but most of these have either failed or been amended so as to place even more restrictions upon annexation and make the law more indefinite and confusing than ever. The annexation law is now totally inadequate to handle a complicated annexation dispute in which both sides are represented by counsel and in which counsel desire to raise the numerous questions which remain unanswered in the statute.

The first amendment in 1947,[20] in order to protect certain special interests, added a restriction that land which was completely surrounded by a municipality could not be annexed until after it had been completely surrounded for a period of twenty years. While the 1945 act required an annexation petition to be filed by the owners of two-thirds of the area to be annexed — a requirement which was admittedly too strict — the amendment, in reducing the number of signers to more than fifty per cent of the area, added the further requirement that such owners "shall also comprise a majority of the landowners residing in the territory at the time the petition is filed, provided that when there are no residents of the territory then the signatures of owners of over one-half of the area of the territory involved will be sufficient for the purposes of this Act."[21]

A corporation may be a landowner and it could sign a petition for annexation, yet it is not a resident, and under the law it could not be counted in determining a majority of the resident landowners. If there were no residents of an area to be annexed, then the owners of fifty-one per cent of the area could initiate annexation. But if there was only one resident landowner, a petition signed by the owners of 99% of the area, if they were not residents, would not be sufficient.

While the 1945 act required an election unless there were less than twenty-five electors qualified to vote and two-thirds of them consented to the annexation in writing, the 1947 act provided that it was not necessary to hold an election unless a counter petition was signed by persons who would have been qualified to sign the petition for annexation in a number of not less than two-thirds of

19 Colo. Sess. Laws 1945, ch. 243 § 3 at 675-76.
20 Colo. Sess. Laws 1947, ch. 314 § 2 at 855.
21 Colo. Sess. Laws 1947, ch. 314 § 3 at 856.

the number of signatures on the petition to annex. The law expressly provides that persons who signed the petition for annexation may also sign the counter petition against annexation. Many times persons will sign a petition for annexation and then change their minds and sign a counter petition against anexation. Sometimes they will change their minds again and will be in favor of annexation at the time of the election. How, then, can one know whether a person is really for or against annexation?

At such an election, only resident landowners can vote. A landowner is one who owns real property therein and who has paid or become liable for a property tax thereon. A resident is defined as a qualified elector. If there are any residents, a church which owns property in the territory cannot be a landowner because it pays no taxes. A corporation which owns land cannot vote because it is not a resident elector. One or more resident electors can therefore defeat annexation even though they own only a small percentage of the area because they may be the only persons qualified to vote.

How is the ownership of fifty per cent of the area to be annexed calculated? When such land has been platted, are the streets and alleys included in the area to be annexed and does this deficiency have to be overcome by obtaining signatures of persons who own much more than fifty per cent of the property that is actually in private ownership? And since a "landowner" is defined in the same terms as a "taxpayer," can a church for instance sign as the owner of land when it pays no taxes? These are other questions which provide stumbling blocks useful to opponents of annexations. The questions must remain unanswered until the supreme court provides some of the answers.

The method of annexing by petition is also very rigid. Under the judicial decision method used in the State of Virginia, the court may alter the metes and bounds of the area to be annexed and thus prevent cities from annexing good areas and excluding the bad.[22] But under the Colorado method, after a petition for annexation has been signed, the boundaries cannot be changed.[23]

Numerous attempts have been made to improve upon the Colorado law by amending it to abolish or shorten the period of immunity from annexation provided for land that is entirely surrounded by a city; to provide for the initiation of annexation proceedings by a city council; to provide for annexation of land that would be included within a straight line drawn between two points on the boundaries of the annexing municipality; to provide a different procedure for annexation by cities under two hundred thousand population from that applicable to the City and County of Denver; to merely clarify some of the definitions and procedural requirements; and to provide for a judicial determination similar to the Virginia plan under which the court has to determine the "necessity for and expediency of" annexation. But all of these attempts have met with defeat.

In 1959 a comprehensive amendment was prepared which carefully prescribed standards that a city council had to find to be in existence before it could initiate annexation proceedings; if proceedings were initiated by the landowners, the council could impose con-

22 Bain, *Terms and Conditions of Annexation under the 1952 Statute*, 41 Va. L. Rev. 1129 (1955).
23 People v. South Platte Water Conservancy Dist., 343 P.2d 812 (Colo. 1959).

ditions upon such annexation, and if fifty-one per cent of the landowners objected to such conditions, an election was to be held among the landowners; and any landowner was entitled to a judicial review of any decision on annexation. This proposal died in committee.

What are the reasons for this determined opposition to a more liberal annexation law? At first it was thought by many that the opposition came from the tri-county area surrounding Denver and that it resulted from the fact that Denver was both a city and a county and that every time an annexation was made to Denver, one of the adjoining counties lost a portion of its tax base. This opposition would be understandable. But proposed bills which excluded Denver from their operation likewise went down to defeat.

A more recent source of opposition has arisen in some of the cities, themselves. Where cities are located closely to each other there is some spirit of rivalry for annexations and each is jealous of gains made by the other. This is apparent in recent attacks upon Denver merely because it is abolishing its requirement for payment of an annexation fee — a requirement which was seldom, if ever, used.

A third source of opposition, and probably the most powerful of all, comes from special interest groups of large industries or businesses which have grown up adjacent to cities. It is not difficult for these businesses to persuade the city councils that they should have water and sewer services if they are immediately adjacent to the city. They sometimes also obtain fire protection from the city, either because of a "good neighbor" policy or because the city will fight a fire to prevent its spread into the adjoining city. These businesses, then, have nothing to gain from annexation and the possibility of a tax increase leads them to oppose any statutory amendment which might lead to the annexation of their property.

Since annexation is a legislative matter, courts cannot interfere by injunction,[24] or with the legislative decision.[25] But opponents can question the validity of the petition or the procedure before the council; again question it in a proceeding in the nature of certiorari in the district court; and finally appeal to the supreme court for an answer to the many questions that can be raised. Contested annexations are thus subjected to long delays.

It is hard to visualize what the ultimate solution to the annexation problem in Colorado will be. It may be that the law will only be liberalized to permit the annexation of substandard areas. This would be expensive to the cities involved, and it would not be welcomed, because cities should be able to annex the good areas with the bad areas.

Annexation is a tool that can be used in providing a local government for urban areas, thus helping to solve "metropolitan" problems. But the tool in Colorado is a highly unworkable instrument. Its indefinateness, lack of clarity, and myriad of unanswered questions results in a fertile field for litigation which can postpone annexations almost to the point of prohibiting them entirely.

24 City of Denver v. Board of County Comm'r. of Arapahoe County, 347 P.2d 132 (Colo. 1959).
25 Brown v. City of Denver, 3 Colo. 169 (1877).